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*Via Certified Mail -
Return Receipt Requested*

August 17, 2020

Dean Soiland, Owner
Anthony Boyle, Director of Production
BO DEAN CO., Inc.
Mark West Quarry
4611 Porter Creek Road
Santa Rosa, CA 95404-9668

Dean Soiland, Owner
Belinda Soiland, Registered Agent
Head of Agency
BO DEAN CO., Inc.
1060 N Dutton Avenue
Santa Rosa, CA 95401-5011

Re: Notice of Violations and Intent to File Suit Under the Federal Water Pollution Control Act (Clean Water Act)

Dear Mr. Soiland, Ms. Soiland, Mr. Boyle, and Head of Agency,

NOTICE OF ALLEGED VIOLATIONS

This Notice is provided on behalf of California River Watch ("River Watch") in regard to violations of the Clean Water Act, 33 U.S.C. § 1251 *et seq.*, ("CWA" or "the Act") that River Watch alleges are occurring at Mark West Quarry, owned and/or operated by BO DEAN CO., Inc. ("Facility") located at 4611 Porter Creek Road in Santa Rosa, California.

Notice is being sent to you as the responsible owners, operators, lessees and/or managers of the Facility and real property. This Notice addresses the violations of the CWA, including violation of the terms of the General California Industrial Storm Water Permit, and the unlawful discharge of pollutants from the Facility to Porter Creek, tributary of the Russian River, a navigable water of the United States impaired under CWA § 303(d) for sediment and temperature entirely, and pathogens in certain areas.

CWA § 301(a), 33 U.S.C. § 1311(a), prohibits the discharge of any pollutant into waters of the United States unless such discharge compliances with with various enumerated sections of the Act. Among other things, CWA § 301(a) prohibits discharges not authorized by, or in violation of, the terms of an individual National Pollutant Discharge Elimination System (“NPDES”) permit or a general NPDES permit issued pursuant to CWA § 402(p), 33 U.S.C. § 1342(p). CWA § 402(p), 33 U.S.C. § 1342(p) establishes a framework for regulating storm water discharges under the NPDES permitting program. States with approved NPDES permitting programs are authorized under this section to regulate storm water discharges through permits issued to dischargers and/or through the issuance of a single, statewide general permit applicable to all storm water dischargers. Pursuant to CWA § 402, the Administrator of the U.S. Environmental Protection Agency (“EPA”) has authorized California’s State Water Resources Control Board (“SWRCB”) to issue NPDES permits including general NPDES permits in California.

The SWRCB elected to issue a statewide general permit for industrial dischargers and issued NPDES Permit No. CAS000001, SWRCB Order No. 92-12-DWQ (the “General Permit”) and amended it significantly on April 1, 2014 (effective July 1, 2015), pursuant to CWA § 402(p). To discharge storm water lawfully in California, industrial dischargers must comply with the terms of the General Permit or have obtained an individual NPDES permit and are in compliance with its terms.

CWA § 505(b) requires a citizen to give notice of the intent to file suit sixty (60) days prior to the initiation of a civil action under Section 505(a) of the Act. Notice must be given to the alleged violator, the EPA, and the state in which the violations occur. As required by the CWA, this Notice provides notice of the violations that have occurred and continue to occur at the Facility. Consequently BO DEAN CO., Inc., Mark West Quarry (the “Discharger”) is placed on formal notice by River Watch that after the expiration of sixty (60) days from the date of this Notice, River Watch will be entitled to bring suit in the United States District Court against the Discharger for continuing violations of an effluent standard or limitation, NPDES permit condition or requirement, or Federal or State Order issued under the CWA (in particular, but not limited to, CWA § 301(a), § 402(p), and § 505(a)(1)), as well as the failure to comply with requirements set forth in the California Toxics Rule (“CTR”) and the North Coast Regional Water Quality Control Board (“RWQCB”) Water Quality Control Plan or “Basin Plan.”

The CWA requires that any notice regarding an alleged violation of an effluent standard or limitation or of an order with respect thereto shall include sufficient information to permit the recipient to identify the following:

1. The Specific Standard, Limitation, or Order Alleged to Have Been Violated

To comply with this requirement, River Watch notices the Discharger of ongoing violations of the substantive and procedural requirements of CWA § 402(p) and violations of NPDES Permit No. CAS000001, (the General Permit) relating to services and operations taking place at the Facility including storm water disposal operations.

The SWRCB's SMARTs reporting database provides documentation that the Facility, rather than seeking coverage under an individual NPDES permit, filed a Notice of Intent ("NOI") agreeing to comply with the terms and conditions of the General Permit. The SWRCB approved the NOI on March 04, 1993, and the Discharger was assigned Waste Discharger Identification ("WDID") number 1 49I009813.

River Watch, on the basis of eye-witness reports, records publicly available, and/or records in the possession and control of the Discharger, contends that in the continuing hard rock mining and quarrying operations taking place at the Facility, the Discharger has failed and is failing to comply with the strict terms and conditions of the General Permit governing storm water discharges.

In addition to the alleged violations of the terms and conditions of the General Permit, River Watch alleges violations of discharge prohibitions contained in the RWQCB's Basin Plan, which are incorporated by reference as part of the compliance obligations imposed on the Facility under the General Permit.

2. The Activity Alleged to Constitute a Violation.

Full compliance with the mandates of the General Permit is not a mere statutory and regulatory exercise. The lands in and surrounding the Russian River Watershed produce a harvest of unparalleled bounty drawing acclaim worldwide. Failing to care for this critical environment as alleged in this Notice is a violation not only of law, but an abrogation of the trust we demand of Sonoma County landowners.

Having agreed to its terms, the Discharger has a continuing burden to demonstrate compliance with each applicable provision of the General Permit. River Watch alleges the following actions and inactions as violations of the General Permit:

A. Failure to Properly Sample and Monitor Storm Water Discharges and Failure to Sample from Representative Sampling Locations

Under the General Permit, the Discharger is required to comply with all the following:

i. "Collect and analyze storm water samples from two (2) Qualifying Storm Events ("QSEs") within the first half of each reporting year (July 1 to December 31), and two (2) QSEs within the second half of each reporting year (January 1 to June 30)" (General Permit XI.B.2).

"Except as provided in Section XI.C.4 (Representative Sampling Reduction), samples shall be collected from each drainage area at all discharge locations. The samples must be:

a. Representative of storm water associated with industrial activities and any commingled authorized NSWDS." (General Permit XI.B.4.a.)

The Facility site has seven (7) drainage areas, each with a corresponding discharge location. (Storm Water Pollution Prevention Plan, October 2018 ("SWPPP") p.1). River Watch, following review of documents on file with the SWRCB's SMARTs reporting database, contends the Discharger regularly samples at only two (2) of the seven (7) discharge points, SP-1 and SP-3.

Under General Permit XI. C.4.

Representative Sampling Reduction

"a. The Discharger may reduce the number of locations to be sampled in each drainage area (e.g., roofs with multiple downspouts, loading/unloading areas with multiple storm drains) if the industrial activities, BMPs, and physical characteristics (grade, surface materials, etc.) of the drainage area for each location to be sampled are substantially similar to one another. To qualify for the Representative Sampling Reduction, the Discharger shall provide a Representative Sampling Reduction justification in the Monitoring Implementation Plan (MIP) section of the SWPPP."

River Watch contends the only possible relevant language in the Discharger's MIP to justify sampling reduction is the following:

"Sample collection is not required for drainage areas with no exposure to industrial activities and materials." (SWPPP, Appendix 4, *Sampling and Analysis* - Provision No. 7).

Referencing a March 20, 2019 communication from County of Sonoma, Permit and Resource Management to Dean Soiland regarding February 2019 site inspections undertaken at Mark West Quarry:

"Stormwater and Sediment Management - The main focus of the February inspections was on structural and non-structural controls for sediment and stormwater management and water quality violations in Porter Creek. The primary issue with the current operation appears to be one of scale: 1) the

landscape orientation of the quarry in relation to the receiving water means that all run-off from the operation discharges immediately to Porter Creek; ... 3) the current 'system' for managing sediment and storm water is not capable of consistently meeting outfall concentrations or loadings that will be in compliance with applicable water quality standards."

Section 4 - *Description of Pollution Prevention Sources*, of the SWPPP provides that the majority of operations taking place at the Facility "are exposed to the atmosphere (mining, reclamation, shipping/receiving, material storage and handling operations, etc.)." Table D: *Potential Pollutant Areas/Activities*, provides a Description of location of directly exposed materials, as: Directly exposed materials (material stockpiles and bunkers in the Materials Processing Area, for example) are present at various locations on the Facility. In addition, portions of the Facility and access roads on-Facility are dirt/gravel areas. (SWPPP, p. 6.)

River Watch contends the Discharger is required to collect samples from each of the seven (7) discharge points on the Facility in order to meet the General Permit requirements for representative sampling.

B. Failure to Provide Sampling Results for Discharges Resulting from Transportation Activities

The General Permit requires the Discharger to ensure that industrial storm water discharges do not: (a) cause or contribute to an exceedance of any applicable water quality standards in the Russian River including its tributaries (General Permit Section I.E.37, VI.A.); (b) adversely affect human health or the environment (General Permit Section VI.B.); and, (c) do not contain pollutants in quantities that threaten to cause pollution or a public nuisance (General Permit Section III.C., VI.C.). The Discharger provides no evidence of complete compliance with these requirements for the Facility's transportation-related areas.

Raw and processed materials are transported by a variety of conveyor systems, heavy equipment, and smaller loaders. (SWPPP, p.7) The Discharger identifies these transportation activities taking place at the Facility but fails to test for copper or zinc which are known pollutants from tires, brake pads, fuels, and lubricants.

C. Failure to Monitor Discharges from Wastewater Ponds and Implement Effective Erosion Control

The Facility's Industrial Processes include the use and operation of wastewater ponds. Several retention ponds and several storm water settling structures, primarily in the Material Processing Area, allow sedimentation prior to discharge. (SWPPP, p.5) The records for the Facility reviewed by River Watch demonstrate capacity concerns

regarding the sedimentation pond connected to Discharge Point SP-1, at the southeast corner of the site, which discharges to Porter Creek. River Watch contends it is highly likely that storm water overflows from the pond prior to adequate time for sedimentation. It is likely that similar overflows occur from other ponds at the Facility.

River Watch contends that Best Management Practices ("BMPs") for the Facility as set out in SWPPP Sections 6.0 ("*Minimum BMPs*") and 7.0 ("*Advanced BMPs*") are not detailed sufficiently to determine whether the ponds are lined or unlined, and whether they are sufficient to hold all regulated storm water prior to evaporation or reuse. The Facility's "*Erosion and Sediment Controls*" identified in Section 6.0 are not detailed sufficiently to determine whether the natural and manmade slopes, process areas, open areas and roads that consist of dirt and gravel roadways within the Facility are constructed and maintained to properly control storm water discharges from the Facility.

D. Failure to Prepare and Implement an Adequate SWPPP

The General Permit requires the preparation, implementation, review, and update of an adequate SWPPP which must comply with the standards of Best Available Technology ("BAT") and Best Conventional Pollutant Control Technology ("BCT").

The General Permit requires dischargers to implement BMPs when necessary, to support attainment of water quality standards. The use of BMPs to control or abate the discharge of pollutants is authorized by 40 C.F.R. §122.44(k)(3) because numeric effluent limitations are infeasible, and implementation of BMPs is reasonably necessary to achieve effluent limitations and water quality standards, and to carry out the purposes and intent of the Act. (40 C.F.R. §122.44(k)(4).)

Compliance with the monitoring and reporting program and the requirement to implement effective BMPs is central to an efficacious General Permit program. The General Permit has required all non-exempt facilities to collect and accurately analyze samples from storm events, and implement effective BMPs detailed in the facilities' SWPPPs that are adequate in reducing or preventing pollutants in storm water discharges and authorized non-storm water discharges.

Discharges from the Facility site contain sediment which adversely affects Porter Creek, tributary to the Russian River, and the Pacific Ocean. River Watch, following review of documents on file with the SWRCB's SMARTs reporting database, contends the Discharger has not fully developed and/or adequately implemented a SWPPP for operations at the Facility as evidenced by the fact that the Discharger has failed to reduce pollutants in storm water to below water quality objectives or standards. A review of the Discharger's Self-Monitoring Reports demonstrates discharges are occurring from the site to Porter Creek exceeding EPA benchmarks and Numeric Action Limits for

sediment. Sediment is being discharged from the Facility to Porter Creek indicating a failure to implement adequate BMPs.

Despite some action taken pursuant to several Exceedance Response Action (ERA) Plans, sampling results show substantial exceedances of TSS Numeric Action Limits (NAL). The following analytical results for TSS Exceedances are documented in the Discharger's ERA Level 2 Technical Report, dated April 24, 2020:

Analytical Results for 2017-18-TSS

Instantaneous Maximum NAL Exceedance

780 mg/L - 11/26/2017 - SP-2

1,100 mg/L - 11/26/2017 - SP-3

500 mg/L - 1/8/2018 - SP-2

660 mg/L - 1/8/2018 - SP-3

470 mg/L - 1/8/2018 - SP-6

890 mg/L - 3/13/2018 - SP-3

Annual NAL Exceedance - 436 mg/L

Analytical Results for 2018-19-TSS

Instantaneous Maximum NAL Exceedance

430 mg/L - 2/25/2019 - SP-1

830 mg/L - 2/25/2019 - SP-7

3,000 mg/L - 3/20/2019 - SP-2

890 mg/L - 3/20/2019 - SP-3

Annual NAL Exceedance - 340 mg/L

Analytical Results for 2019-2020 (partial season)

Instantaneous Maximum NAL Exceedance

950 mg/L - 2/18/2019 - SP-1

More recent sampling results show levels of TSS below NAL. However, samples were collected at only two (2) of the seven (7) discharge points, SP-1 and SP-3 (Self-monitoring reports for samples taken on 05/12/2020, 5/28/2020).

The Discharger has been and will continue to be in violation of the Act every day it discharges storm water containing pollutants as identified in this Notice without adequately implementing its SWPPP and the BMPs required to be incorporated in that SWPPP.

Storm water on the Facility site comes in contact with sediment disturbed during hard rock mining and quarrying operations, operations which cause storm water to be polluted by the sediment. Sediment is also discharged into storm water at the Facility due to excessive erosion of previously reclaimed areas, as reported in the March 20, 2019 communication from County of Sonoma, Permit and Resource Management to Dean Soiland referenced above.

River Watch, following review of the SMARTs reporting database, contends the Discharger has failed and continues to fail to eliminate the ongoing discharges of polluted storm water in exceedance of EPA Benchmarks and NAL, and therefore is in violation of the terms of the General Permit.

River Watch contends that from August 1, 2015 to the present, the Discharger violated the CWA by discharging pollutants from the Facility to waters of the United States without an individual NPDES permit, and in violation of the General Permit. Furthermore, River Watch contends these violations are continuing.

Discharges from the Facility site to the adjacent Porter Creek occur by unpermitted discharges of polluted storm water via intermittent drainages on the Facility.

River Watch contends that since the beginning of operations, the Discharger has discharged storm water containing pollutants and non-storm water pollutants from the Facility site into Porter Creek, in violation of the General Permit, during at least every rain event over 1 inch as measured by the National Oceanographic and Atmospheric Administration.

“It is clear from visual observation that without a substantial storm water detention system, combined with intensive non-structural sediment source controls, the current site configuration virtually guarantees exceedances to Porter Creek whenever it rains sufficiently to discharge water from the quarry” (March 20, 2019 communication from County of Sonoma, Permit and Resource Management to Dean Soiland, p.2).

The Discharger will continue to be in violation of the General Permit each day it discharges non-storm water pollutants and contaminated storm water from the Facility in violation of the General Permit.

River Watch believes the Facility is not operated by the Discharger to ensure that storm water discharges are properly contained, controlled, and/or monitored. As a result, the Discharger fails to follow the requirements of the General Permit in its sampling protocols by failing to accurately capture “first flush” samples and failing to properly sample from all the outfalls of the Facility site.

River Watch alleges the Discharger has no individual NPDES permit allowing the discharge of pollutants from a point source within the Facility to any waters of the United States. River Watch alleges that quarry operations and other industrial activities at the Facility result in the discharge of industrial wastewater without a permit. The sampling results detailed above indicate polluted storm water continues to be discharged from the Facility to waters of the United States.

In addition to violations of the CWA detailed above, the Facility's discharge of sediment exceeding water quality standards to Porter Creek also raises concerns regarding violations of the Federal Endangered Species Act (ESA). Porter Creek is a spawning habitat for endangered salmonids, coho salmon and steelhead trout. Excessive sediment can interfere with normal breeding activity, resulting in a "take" of the endangered fish species as that term is defined in the ESA.

3. The Person or Persons Responsible for the Alleged Violation

The entity responsible for the alleged violations identified in this Notice is BO DEAN CO., Inc., as owner and operator of Mark West Quarry, as well as those of its employees responsible for compliance with the General Permit.

4. The Location of the Alleged Violation

The location of the various violations of the CWA is the permanent address of the Facility at 4611 Porter Creek Road in Santa Rosa, California, Sonoma County Assessor's Parcel Number 120-210-048. Pursuant to the Site Map and SWPPP, the Facility site encompasses some 81 acres of land and includes those lands assigned Sonoma County Assessor's Parcel Numbers 120-210-031, 120-210-006 and the west portion of 120-210-050.

5. The Date or Dates of Violation or a Reasonable Range of Dates During Which the Alleged Activity Occurred

The range of dates covered by this Notice is August 1, 2015 through the present. This Notice includes all violations which occur after the range of dates covered by this Notice up to the end of trial. Some of the violations are continuous in nature, and therefore each day constitutes a violation.

6. The Full Name, Address, and Telephone Number of the Person Giving Notice

The entity giving this Notice is California River Watch, an Internal Revenue Code § 501(c)(3) nonprofit, public benefit corporation organized under the laws of the State of California, with headquarters located in Sebastopol, California. River Watch's mailing address is 290 S. Main Street, #817, Sebastopol, CA 95472. River Watch is dedicated to

protecting, enhancing and helping to restore surface and ground waters of California including coastal waters, rivers, creeks, streams, wetlands, vernal pools, aquifers and associated environs, biota, flora and fauna, and educating the public concerning environmental issues associated with these environs.

River Watch may be contacted via email: US@ncriverwatch.org, or through its attorneys. River Watch has retained legal counsel with respect to the issues set forth in this Notice. All communications should be directed to the undersigned.

REMEDIAL MEASURES REQUESTED

River Watch believes that at a minimum, implementing the requirements of the General Permit as outlined in this Notice is necessary in order to bring the Facility into compliance with the CWA and reduce the biological impacts from its non-compliance upon public health and the environment.

CONCLUSION

The violations set forth in this Notice affect the health and enjoyment of members of River Watch who reside and recreate in the affected community. Members of River Watch may use the affected watershed for recreation, fishing, hiking, photography, nature walks and/or the like. Their health, use, and enjoyment of this natural resource is specifically impaired by the Discharger's alleged violations of the CWA as set forth in this Notice.

The General Permit, in the very first "Standard Condition," states that "Dischargers shall comply with all standard conditions in this General Permit. Permit noncompliance constitutes a violation of the Clean Water Act and the [California] Water Code and is grounds for enforcement action and/or removal from General Permit coverage" (General Permit Section XXI.A). The gravity of ensuring that the Annual Reports submitted to the State of California are complete and accurate is highlighted by the General Permit requirement that the person signing and certifying the document certifies that "to the best of my knowledge and belief, the information submitted is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations" (General Permit Section XXI.L).

CWA §§ 505(a)(1) and 505(f) provide for citizen enforcement actions against any "person," including individuals, corporations, or partnerships, for violations of NPDES permit requirements and for unpermitted discharges of pollutants. 33 U.S.C. §§ 1365(a)(1) and (f), §1362(5). An action for injunctive relief under the CWA is authorized by 33 U.S.C. §1365(a). Violators of the Act are also subject to an assessment of civil penalties of up to \$55,800.00 per day/per violation pursuant to Sections 309(d)

and 505 of the Act, 33 U.S.C. §§ 1319(d), 1365. *See also* 40 C.F.R. §§ 19.1-19.4. River Watch believes this Notice sufficiently states grounds for filing suit in federal court under the “citizen suit” provisions of CWA to obtain the relief provided for under the law.

The CWA specifically provides a **60-day** “notice period” to promote resolution of disputes. River Watch encourages the Discharger to contact counsel for River Watch within **20 days** after receipt of this Notice to continue on-going discussions regarding the allegations detailed in this Notice. In the absence of productive discussions to resolve this dispute, or receipt of additional information demonstrating the Facility is in compliance with the strict terms and conditions of the General Permit, River Watch will have cause to file a citizen’s suit under CWA § 505(a) when the 60-day notice period ends.

Sincerely,

A handwritten signature in cursive script, appearing to read "Jack Silver", with a horizontal line extending from the end of the signature.

Jack Silver

JS: lhm

Service List

Andrew Wheeler, Administrator
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✓ John W. Busterud, Regional Administrator
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Eileen Sobeck, Executive Director
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